

## REMARKS

### Summary of Office Action

As an initial matter, Applicants note with appreciation that the Examiner has withdrawn the rejections under 35 U.S.C. § 103(a) over Lee et al., U.S. Patent No. 6,992,054 (hereafter “LEE”) and over LEE in view of McAtee et al., US 2002/0009484 (hereafter “McATEE”) set forth in the previous Office Action.

Claims 21-43 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Kaneda et al., US 2001/0046948 (hereafter “KANEDA”) in view of McATEE.

Claims 21-25, 27, 29-35, 38, 39 and 42 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Drucks et al., US 2002/0102289 (hereafter “DRUCKS”).

Claims 26, 28, 36, 37, 40, 41 and 43 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over DRUCKS in view of McATEE.

### Response to Office Action

Reconsideration and withdrawal of the rejections of record are again respectfully requested, in view of the following remarks.

#### ***Response to Rejections of Claims under 35 U.S.C. § 103(a) over KANEDA in View of McATEE***

Claims 21-43, i.e., all claims of record, continue to be rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over KANEDA in view of McATEE.

Applicants again respectfully traverse this rejection for all of the reasons which have been set forth in the responses to the previous Office Actions. The corresponding remarks are incorporated herein. It is pointed out again that present independent claim 21 recites, *inter alia*, that the cleansing preparation is foaming. There is not the slightest indication in KANEDA that the impregnating emulsion of KANEDA is, or preferably should be, foaming. Moreover, according to KANEDA the concentration of the oily component in the emulsion disclosed therein is preferably at least 10 %, more preferably at least 20 % by weight. The compositions of Examples 1-4 of KANEDA relied on by the Examiner all comprise at least 45 % by weight of oily component. It is not seen that with such high concentrations of oily component (and relatively low concentrations of surfactants) it would even be possible to prepare a foaming composition. For example, the articles of McATEE which comprise a lathering surfactant releasably associated with the substrate do not appear to contain any oil component at all. The compositions which are exemplified in the present specification also contain only small amounts of oil component.

It is noted that the Examiner again takes the position that KANEDA teaches anionic surfactants like those recited as component (a)(i) in claim 21 in proportions which overlap those recited and “hence, the emulsion of [KANEDA] should also be foaming because similar anionic surfactants have been utilized” and “[p]roducts of identical composition can not have mutually exclusive properties”. Paragraph bridging pages 3 and 4 of the instant Office Action.

Applicants submit that this position is clearly without merit. The mere fact that the emulsions of KANEDA may contain similar anionic surfactants in the same proportions as recited in present claim 21 apparently does not justify the conclusion that these emulsions and the cleansing

preparation of claim 21 necessarily have the same composition.

Applicants further point out that the emulsions of the working examples of KANEDA which the Examiner is relying upon “to show the relationship of the weight ratio of anionic and nonionic surfactants” do not contain any anionic surfactant but merely one or two nonionic surfactants, i.e., polyoxyethylene sorbitan monostearate (20 E.O.) and in some cases additionally isostearyl glyceryl ether.

In this regard, it is submitted that the Examiner may have considered the “aluminum dialkylphosphate” which is present in the exemplified emulsions of KANEDA to be an example of the “phosphate-type surfactants such as alkylphosphoric acid ester-type surfactants” which are mentioned in paragraph [0020] of KANEDA as examples of anionic surfactants which may optionally be present in the emulsions disclosed therein. However, aluminum dialkylphosphate clearly is an example of a metal dialkylphosphate which is taught in paragraph [0023] of KANEDA to be an example of an oily thickening agent.

Accordingly, KANEDA does not even exemplify an emulsion which comprises two different kinds of surfactants, let alone a combination of a nonionic surfactant and an anionic surfactant, which is yet another reason why KANEDA is unable to render obvious the subject matter of any of the instant claims. Further, none of the compositions of Examples 1-4 of KANEDA contains an alkyl polyglycoside as a nonionic surfactant, which is consistent with the fact that KAMEDA does not even mention alkyl polyglycosides as examples of suitable nonionic surfactants.

McATEE is unable to cure the above-noted deficiencies of KANEDA. In particular, the mere fact that McATEE mentions both alkoxylated fatty acid esters (assuming, *arguendo*, that they

are identical with, or at least similar to polyoxyalkylene fatty acid esters) and alkyl polyglycosides as two of many examples of nonionic surfactants is not sufficient to suggest to one of ordinary skill in the art that these two types of nonionic surfactants are interchangeable, let alone sufficient to prompt one of ordinary skill in the art to combine an alkyl polyglycoside with one or more selected anionic surfactants mentioned in the long list of exemplary anionic surfactants mentioned in paragraph [0020] of KANEDA (none of which is employed in any of the Examples of KANEDA) and to include the resultant combination in an emulsion according to KANEDA.

In this regard, it further has to be taken into account that with one exception all of the nonionic lathering surfactants mentioned in paragraph [0126] of McATEE are completely different from the nonionic surfactants mentioned in paragraph [0020] of KANEDA, which is at least a strong indication that the lathering nonionic surfactants taught by McATEE are not particularly desirable for the purposes for which the nonionic surfactants of KANEDA are to be employed.

In addition, the list of preferred nonionic surfactants in paragraph [0131] of McATEE, while including alkyl polyglucosides, does not include alkoxylated fatty acid esters, which is an indication that even for the purposes of McATEE alkyl polyglucosides and alkoxylated fatty acid esters are not equivalent (interchangeable).

Applicants submit that for at least all of the foregoing reasons and the additional reasons set forth in the responses to the previous Office Actions, KANEDA in view of McATEE fails to render obvious the subject matter of any of the present claims. Accordingly, withdrawal of the rejection of claims 21-43 under 35 U.S.C. § 103(a) over KANEDA in view of McATEE is again respectfully requested.

***Response to Rejections of Claims under 35 U.S.C. § 103(a) over DRUCKS***

Claims 21-25, 27, 29-35, 38, 39 and 42 continue to be rejected under 35 U.S.C. § 103(a) as allegedly being obvious over DRUCKS.

This rejection is respectfully traversed again, for all of the reasons which are set forth in the responses to the previous Office Actions. The corresponding remarks are incorporated herein.

Applicants point out again that not a single one of the almost 20 exemplified compositions of DRUCKS contains two or more different classes of surfactants, let alone a combination of anionic surfactant and nonionic surfactant, although all of the surfactant containing compositions of DRUCKS appear to contain at least two surfactants. Additionally all of the surfactants which are employed in the Examples of DRUCKS appear to be exclusively nonionic surfactants and in particular, nonionic surfactants that are completely unrelated to alkyl polyglycosides.

It further must be taken into account that in paragraphs [0034] to [0069] thereof DRUCKS mentions (considerably) more than 100 examples of specific surfactants and classes of surfactants which may optionally be employed, giving rise to thousands of possible combinations of surfactants, without teaching or suggesting that any combination of different classes of surfactants may result in any advantages which cannot be obtained with a single class of surfactants or any other combination of surfactants.

In this regard, the Examiner is reminded that the fact that a claimed species or subgenus is encompassed by a prior art genus is not sufficient by itself to establish a *prima facie* case of obviousness. *In re Baird*, 16 F.3d 380, 382, 29 USPQ2d 1550, 1552 (Fed. Cir. 1994) ("The fact that a claimed compound may be encompassed by a disclosed generic formula does not by itself render

that compound obvious."); *In re Jones*, 958 F.2d 347, 350, 21 USPQ2d 1941, 1943 (Fed. Cir. 1992) (Federal Circuit has "decline[d] to extract from *Merck [& Co. v. Biocraft Laboratories Inc.]*, 874 F.2d 804, 10 USPQ2d 1843 (Fed. Cir. 1989)] the rule that... regardless of how broad, a disclosure of a chemical genus renders obvious any species that happens to fall within it."). See also *In re Deuel*, 51 F.3d 1552, 1559, 34 USPQ2d 1210, 1215 (Fed. Cir. 1995). See MPEP 2144.08 II.

Moreover, even if one were to assume, *arguendo*, that DRUCKS renders it obvious to one of ordinary skill in the art to employ a combination of (i) at least one nonionic surfactant and in particular, an alkyl polyglycoside and (ii) at least one anionic surfactant and in particular, an anionic surfactant selected from acylamino acid surfactants, sarcosinates, sulfosuccinate citrates, monoalkyl phosphates, and olefin sulfonates, it is not seen that DRUCKS provides an apparent reason for one of ordinary skill in the art to employ these surfactants in weight ratios within the ranges recited in, e.g., present claims 22 and 23. DRUCKS clearly fails to teach or suggest that the weight ratio of (any) two different classes of surfactants is a result-effective variable, wherefore the question arises what would have prompted one of ordinary skill in the art to optimize a weight ratio of the anionic surfactants recited in the present claims to nonionic surfactants and in particular, alkyl polyglycosides.

Applicants submit that for at least all of the foregoing reasons and the additional reasons set forth in the responses to the previous Office Actions, the instant rejection is unwarranted and should be withdrawn, which action is again respectfully requested.

P30826.A08

***Response to Rejections of Claims under 35 U.S.C. § 103(a) over DRUCKS in View of McATEE***

Claims 26, 28, 36, 37, 40, 41 and 43 continue to be rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over DRUCKS in view of McATEE.

Applicants respectfully traverse this rejection for all of the reasons which are set forth in the responses to the previous Office Actions. The corresponding remarks are incorporated herein. Withdrawal of the rejection is again respectfully requested.

**CONCLUSION**

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Respectfully submitted,  
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/Heribert F. Muensterer/

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